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DEFERRED ARTICLES.

The Forester, North Carolina, a Loco Foco paper, has a very sensible article in relation to the strenuous efforts now making by the British Government to suppress the use of American cotton in that country. The Carolinaian advertises to the planters now on foot to push the cultivation of cotton in India, and even to extend it to Africa; and it remarks with great pertinency, "If once they can, by some cultivation, avoid buying from us our cotton and other produce, the produce of slave labor, they at once close the market against the Southern planter." True, and what then is the Southern planter to do, if there be no home market open to him? As a writer in the Raleigh Register will remark, "This subject should be discussed without party feeling or sectional prejudice. There is too much at stake to be sacrificed at the shrine of party or prejudice. We must have a market for our cotton—none already made, or as good, as a nation, make one. In high times I acknowledge I was much inclined against a tariff. But these facts stagger me. If we do not encourage and protect our own cotton manufactures, and thus make a market for ourselves, what shall we do?"

Mr. Charles Jared Ingersoll, in the debate on the Rules of the House of Representatives, with that pertinency of remark which always distinguishes his manner of discussion, attacked Mr. Webster for removing the Chief Clerk in the Department of State. To be sure that Chief Clerk was known to be an habitual writer for the Globe newspaper, and his office is one requiring the most confidential relations with the Secretary. It does not seem absurd, however, to Mr. Ingersoll, that the Head of a Department should have an active political adversary for his chief official relative. He deems it proper to employ such agents as are most disposed to thwart his efforts and defeat his purposes. He thinks, no doubt, for the same reason, that it was inauspicious and preposterous, on a large scale, for the people of the United States to turn out Martin Van Buren and elect General Harrison, in whom they had more confidence.

MR. JEFFERSON.—The National Intelligencer, after referring to the state of opinion in Congress on the subject of a National Bank, has the following interesting paragraph:

"In connection with this subject, it occurs to us to state that one of the most respected citizens of Virginia, who was a Republican of 1793, and will be one to his dying-day, in a letter which we have just received from him, advocating to the advantage that is attempted to be taken of Mr. Jefferson's official opinion in 1791 on the subject of a National Bank, says that apart from the repeated sanction to the first Bank given by Mr. Jefferson's approval of the extension of it to Louisiana, and of other acts relating to it, he (the writer) well remembers having heard, from persons who were present when Mr. Madison's signature of the Bank bill of 1816 was procured, that Mr. Jefferson with great emphasis vindicated Mr. Madison, and said that the General Government must have a Bank so long as the States were suffered to have them, for that the General Government could not get along without one. Who ever has it in his power to verify this fact from his own knowledge, and little doubt is entertained that living testimony yet exists—would confer a great obligation on the country by doing so at the present moment, either through this paper or through some other channel."

Riding against time.—A man whose name we did not ascertain, for a bet of \$1000 undertook to ride over the Beacon Course, near Hoboken, N. J. 300 miles in 24 successive hours, on a number of different horses. He commenced at 6 o'clock, on Thursday evening, rode 200 miles the first 12 hours, and completed his task yesterday at five minutes after 5 o'clock, being 55 minutes within the time, and winning the bet. This is the greatest distance, in the same time, we have ever heard of being performed in the country, and we believe also in England, where, if our information be correct, 270 miles is the greatest distance ever performed in 24 consecutive hours. N. Y. Paper.

As an evidence of the brotherly spirit which presides among the Loco Foco members of the Editorial corps, we copy the following complimentary notice taken by Parson Fisk, of the Portsmouth Old Dominion, of his friend the editor of the Globe:

"To the Washington Globe demented? Has the editor caught the hydrophobia? Else, how are we to account for the uncalled for, injudicious attack of the editor of that paper upon the Message of President Tyler? If the editor disliked its recommendations, disagreed with its positions, he could at least have said so in decent language; he might at least have

made some slight show of courtesy upon the occasion; instead of which he thought it a proper and fitting occasion, to give vent to all that spleen that has been accumulating since the Senate took away from that establishment the public printing. I know of nothing which has more greatly astonished me than the policy which has been pursued by the Globe in relation to this matter. If the editor is desirous of keeping the democratic party in a minority for the next ten years, he is taking an effectual course to produce that effect."

The Petersburg Intelligencer recalls the fact, that Mr. Van Buren himself, in his letter to Sherrod Williams, of August 5th, 1836, admits the power in Congress to incorporate a National Bank in the District of Columbia, and only opposes the establishment of such an institution on the ground that it is, as he supposes, unnecessary and inexpedient. The Intelligencer will say, we should like to know who among the friends of Mr. Van Buren have condemned this opinion.

THE WORTH OF CHARACTER.

Extract from a discourse on the Death of William Henry Harrison, late President of the United States, by Rev. Charles B. Haddock, Professor of Intellectual Philosophy in Dartmouth College.

"To young men, especially to young men who have chosen for themselves the sphere of civil life, the history of the departed statesman is full of instruction."

"The great lesson, which his life most strikingly and vividly expressed with something of Aphoristic brevity, is this, 'Do well and wait.' Confidence," said the Earl of Chatham, "is a plant of slow growth." And again the merit, by which confidence is won. The greatest of all mistakes, at the outset of life, is the mistake of presuming on the favor of mankind without earning it. To youth this would well pardon much. Its indiscretion and obliquities are overlooked with surprising charity. But youth soon passes away, and, with it, passes away also, the leniency of judgment, the kind allowance, with which its errors and follies are regarded. The man is measured by a severe standard; and awards are meted out to him on sterner principles. The high posts, the permanent distinctions of life, its great prizes, are all purchased by weary years of toil. It is true, in a country like ours, the patient cultivator of himself, the diligent student of the abstruser and less inviting principles of things, may be, sometimes, outrun, and distanced, by nimble, more bustling, and less scrupulous spirits. But let him consider, that, whilst the monarch of the forest is slowly maturing to his noble stature, generation after generation of the grass and weeds, that shaded his infancy, wither and rot at his foot. In a quarter of a century many shining names grow dim; many budding honors are blighted. But one man in a hundred lives to come to any thing. We are too anxious to reap before we sow. The husbandman waits for the precious fruit of the earth, and hath long patience for it, until he receive the early and the latter rain." The objects which young men propose to themselves can hardly be too great; but they may be too near. Impatience is the sin of youth. Unity and steadiness of pursuit are the true secrets of ultimate success.

"It is, however, an animating thought, to the man of patient, iron industry, that, if its great rewards must all be earned, they are seldom withheld. The market seems sometimes overstocked; and a young man's spirit sinks within him, at the thought of having so many to contend with, and so little to be divided among them all. But the rarest thing in the world is character, the growth of personal pains, and sacrifices, and trials. Every place and every calling wants it. It is never seen begging bread. Any price will be paid for it."

"These principles are strongly enforced by the example of General Harrison. At a late period of life, unambitious, and retired from public observation, he was sought out and solicited to accept the first office in his country. A man was inspired to concentrate public sentiment, to inspire general confidence. The able statesman, the great orators of the time, were all passed by; and Cincinnati was again called from the plough. That he had always done well, whatever he had done, and aimed uniformly to perfect himself, was his title to office."

There is now wanting only two or three links to complete the long line of Rail Road from Maine to North Carolina—24 miles of which is between Hartford and Springfield, and fifty miles from New Haven to the State Line of New York, making one entire line from Buffalo on the west and Portland on the east to the city of Washington—in length of over 1000 miles when this is completed, we have an iron line from the east to the west, north to south and south-west, of continued lines with the exception of about 50 miles from Washington to Fredericksburg, Va., of nearly 2000 miles.

Hartford Courant.

Debate in the Senate.

THE CASE OF MCLEOD.

Friday, June 11, 1841.

The business before the Senate being the motion of Mr. Rives to refer so much of the President's message as relates to our foreign affairs to the committee on foreign affairs, and Mr. Calhoun having concluded his remarks—

Mr. HUNTINGTON addressed the Senate substantially as follows:

Mr. President: The importance of the principles involved in the present discussion induces me to throw myself upon the indulgence of the Senate, to reply to the remarks which have been made by the Senator from Pennsylvania (Mr. Buchanan) and the Senator from South Carolina (Mr. Calhoun). To the able and conclusive arguments of my friends from Virginia and Massachusetts (Mr. Rives and Mr. Chase,) it will not be expected that much, if any thing, can be added; but the nature of the subject, the novelty of the doctrines advanced, and the attack upon the character of the Executive Administration, as wanting in energy and spirit, will justify even a repetition of the views which are entertained by those who approve of the course which has been taken by the administration in respect to the matters which have given rise to this debate.

Perhaps no documents ever emanated from the Department of State of the United States which have received more universal commendation and approval from the American people, so far as they have had an opportunity to read and consider them, than the letter of the Secretary of State to Mr. Fox, and the instructions to Mr. Crittenden, (the Attorney General,) which have led to this discussion. Men of all parties, the public press with very few exceptions (so far as I know,) jurists, and the people at large, have united in speaking of these papers as deserving of all praise, for their sound doctrine, patriotic spirit, and firm devotion to the interests and honor of the country. For the first time since they are, at least partially, condemned, and that, too, in the Senate of the United States. And the Senator from Pennsylvania disapproves of them—

1. As containing doctrines not sustained by, but opposed to, the principles of international law.

2. As having been written while a marvellous panic was prevailing, evincing a spirit not creditable to the American character; wanting in necessary energy, and not possessing sufficient American spirit.

These I consider grave charges. They are condemnatory of men who have filled some space in the eye of the public; who are known to be men having some acquaintance with the public law, and who have not been obnoxious to the charge of being under the influence of the fear of foreign governments. They are men who hold the important stations of President and heads of the different executive departments. I have heard it said that a former Chief Justice of the United States, after having for some hours, or days, listened to counsel who occupied the time of the court in stating elementary principles never doubted, and having no application to the case on trial, very significantly, yet courteously, remarked to him that it was to be resumed, from the peculiar organization of the Supreme Court of the United States, the Judges knew something. So it may be said of such men as the President, Mr. Webster, Mr. Crittenden, Mr. Ewing, and the other cabinet officers, that it is to be presumed, from their characters, their pursuits, and other circumstances, they know something about the principles of international law, and possess something of the character of American citizens and statesmen. They may all be wrong in the views they have taken of the matter now under debate, but the presumption is, that they have not acted through willful ignorance, nor from any other but the spirit and feeling which should actuate every American functionary. They are to be presumed to be innocent of what I cannot but call accusations which have been made against them until proved to be guilty. And, sir, in the remarks which I propose to make, I intend to consider all the points which have been presented as furnishing matter of condemnation of the executive and his constitutional adviser. I intend to analyze the speech of the senator from Pennsylvania with courtesy and fairness, as he always does when commenting upon the remarks of those from whom he differs. I intend to controvert all the points in which he has condemned the Secretary of State, and endeavor to show that his views are not sustained by precedent, nor founded in principle. The matters discussed are of deep interest. They have a bearing beyond the present subject, to which they have been applied. I think they affect our character as a nation, as well as the character of the Executive and his cabinet. It is to be seen whether the Executive of the country and the persons whom he has called to assist him in this high office, are justly chargeable

with being actuated by unnecessary alarm; with being under the influence of a panic; with being wanting in American spirit and firmness; with evincing a spirit of fear, a like unnecessary and discreditable. In this view, the discussion is one of paramount interest, and I believe it will result, as others of a like character have done, in adding another laurel to the brow of him who, while his motto has ever been "Equal and exact justice to all nations," has in connection with it, practised upon another, equally significant and patriotic, "Our country, our whole country, and nothing but our country."

Before I proceed to consider the topics which have been embraced in the present debate, and which have been elaborately examined and considered, I wish to submit two preliminary remarks. One is, that if it should be thought inadvisable to introduce this discussion, under existing circumstances, the friends of the present Administration are not accountable for it. It is well known that the matter of the arrest and indictment of McLeod is now pending before the Supreme Court of the state of New York upon a habeas corpus, prayed out to procure his discharge. The case has been argued before that court. The discussion at the bar has closed. The case remains for adjudication, and is yet undecided. If, then, it should be supposed that a debate here, upon the points already argued, but not decided, is out of place, as having a tendency improperly to interfere with a matter under judicial adjudication, and especially as no practical result having any connexion with the interests or honor of the country would follow from the debate, in as much as no action from the Government is involved, it should be remembered that it is the work of the opponents of the administration, and for which they alone are responsible. We have not sought this discussion. We have said nothing which should provoke it. Whatever of real or apparent impropriety there may be in introducing it, it is to be attributed to those who act on the offensive—not to us, who act on the defensive. The other preliminary remark is, that the effect—the necessary consequence of the doctrines advanced by the senators from Pennsylvania and South Carolina, is to relieve the British Government from the responsibility of ordering an armed force to assemble, and, in time of peace, to make an unjustifiable and unauthorized entry into our territory; and to divest the British Government of its responsibility to the nation which avows the act as having been done by its authority, and assumes the consequences of it—and to seek redress by asking a state court to order the individual who did the offensive act (if legally convicted) to be executed; and when this is done, the national honor has been sustained, the national wrong may be considered as redressed. I am aware that this is not admitted to be a legitimate consequence of the doctrine assumed. I know it is said that the remedies are cumulative—that the government and the individual are both responsible—the one for ordering the act to be done, and the other for performing it. But I think it will be found that it is impossible, in the present case, to unite in individual with national responsibility—that no precedent can be found for holding McLeod liable as an individual, and hanging him as a malefactor; and at the same time looking to the British nation for an indemnity for the consequences of the act as done by her authority, and taking such measures as honor and duty may require to obtain suitable reparation. The senator from South Carolina argued that this was like the common case of principal and agent in relation to torts or crimes, both of whom, he said, were liable as wrong doers. As to the municipal law of principal and agent, nothing is clearer than that, in civil cases, as to contracts, the agent, who does not voluntarily incur a personal responsibility, is not liable when acting as agent, if he acts in behalf of a known principal; and as to torts, he is not responsible, if he acts under an authority which the law requires him to obey, or presumes that he cannot resist. Thus, in the case of husband and wife, she is, in general, not liable if she commits a trespass in presence of, and by command of, her husband. So, too, he who acts under the order of a legal tribunal, in executing a criminal conviction of murder, is justified. The reasonable principle is applied, that there is no free agency. But I am anticipating what I have to say on the subject of individual liability. I refrain, for the present, from pursuing it further, and only add, that the issue should be presented fairly to the nation, as it really exists; as one in which the administration ask and insist upon the responsibility of the government of Great Britain; and their opponents, looking away from that Government, fix that responsibility upon McLeod alone. Such is the case presented to the American people. They will find no difficulty in making up their opinion upon it.

With these preliminary remarks, I proceed to consider the matters which have been presented in this debate. And it is well to look at the precise questions in controversy. We are not now discussing the question whether Great Britain is correct

in her pretension that the destruction of the Caroline was justifiable as an act of self defence—as an employment of force for the purpose of defending the British territory from the unprovoked attack of a band of English rebels and Americans; or whether, as the government of the United States regards it, it was a most unjustifiable invasion in time of peace of the territory of the United States. This subject is not connected with that now under discussion. Nor is it necessary to inquire whether an act done originally without authority from the government is exempt from the consequences of personal responsibility, by reason of a subsequent recognition of it by the government; for no such case exists. The Secretary of State, in his note to Mr. Fox, uses the following language: "The government of the United States entertains no doubt that, after the avowal of this transaction as a public transaction, authorized and undertaken by the British authorities, individuals concerned in it ought not, by the principle of public law and the general usage of civilized states, to be held personally responsible in the ordinary tribunals of law for their participation in it." So in his letter of instructions to Mr. Crittenden, he says: "That an individual, forming part of a public force, and acting under the authority of his government, is not to be held answerable, as a private trespasser or malefactor, is a principle of public law, sanctioned by the usage of all civilized nations, and which the government of the United States has no inclination to dispute." The inquiry then is, is this doctrine, thus avowed and acknowledged by the Secretary of State, sound doctrine? Is it in accordance with reason, and sustained by authority? Or, as is insisted by some senators, is it opposed to the law of nations? Is it, and ought it to be, repudiated by the rules of public law? I propose to answer this inquiry, by reference to general acknowledged principles, independent of precedents; and then to sustain the views taken by the American government by undoubted authorities and precedents of established authority. And there are several views which may be taken of the subject, each of which is decisive.

The exemption from personal responsibility, in the ordinary legal tribunals, of an individual under the circumstances stated in the communication of the Secretary of State, is the result or consequence of two plain, reasonable, and well-established principles of international law. They are the following:

1. The right of every independent, acknowledged government, as between itself and other governments, to require of its own citizens the performance of acts deemed by it necessary or proper to promote or protect its real or supposed rights or interests. This right grows out of its recognized and admitted independence and sovereignty. It must judge for itself what its own honor or interests require, subject to a just accountability to other nations who may be affected by its acts. If those acts are justifiable as against the whole world, then it has violated no law; if unjustifiable, the law which has been violated is the law of nations, which provides the redress the injured nation may seek. But whether the acts required to be done are, in respect to other nations, lawful or unlawful; whether they are justifiable or not in the view of the law of nations, are inquiries which the citizen upon whom the requisition is made, answers only to his own Government. With such questions, so far as they relate to the duty of a citizen acting under the authority and by order of his Government, as a part of a military force, other governments cannot intermeddle. In respect to him and foreign governments, the authority to make the requisition is complete. If it were not so, every government whose rights were invaded would be at liberty to judge as to the duty which the citizens of other governments owe to their own supreme authority. Each would have the right to determine for another independent government the extent of its power over its own citizens; and so there would be practically an end of the sovereignty of every state; and, following out the doctrine to its legitimate results, it would empower any government who should be in open, solemn war with another, to regard and treat (if it so pleased) all whom it took in arms as trespassers, wrong-doers, and malefactors, and subject them to the rules of municipal law, and to the ordinary tribunals of justice; for if the nation invaded can look beyond the nation invading, and treat individuals as private trespassers, they can do it in all cases, whether that of an isolated act of force, or that of an imperfect war, or that of a solemn war preceded by a declaration of hostilities. They can try as criminals all prisoners of war, and, if found guilty, execute them as private malefactors. Such a doctrine would be as abhorrent to sound reason as it is opposed to all authority. It follows then necessarily, from these considerations, that if a military force is ordered to be organized by a legitimate, acknowledged government, for the avowed purpose of enforcing its real or supposed rights against another nation, that government (so far as all other govern-

ments are concerned) can require of its citizens that they organize for such purposes, and engage in the objects of such organization. This is the right of the government.

2. The corresponding duty of obedience by the citizen following from the right of his government to require obedience. Other nations cannot inquire whether the citizen is under an obligation to obey the order of his own government, or whether he could be lawfully required to aid in the performance of the acts demanded of him. They must treat his participation in them as a duty he owes to his government. He may or he may not stand excused to his own government for disobedience; but as it regards all others, if he performs the required act, he does no more than what his duty to aid his own country requires and justifies. This duty or right to engage in these acts follows from the command of his government, which he must obey. If, then, an armed force is directed by one nation to be raised to act upon another nation, the citizens of the former are under obligation, so far as all foreign nations are concerned, to become a part of such force, and to engage in the objects for which they are organized. This is the duty of the citizen.

From these two principles the following inference or conclusion is drawn, as being necessary, inevitable, and just, viz., that such citizens forming a part of such an organized force, and acting under such national authority, cannot be held to answer for their acts, performed under that authority, as private wrong-doers or malefactors. Such result follows from the admitted principle of the right of the government to exact obedience, and the corresponding duty of the citizen to yield it. The performance of the act is demanded of him by lawful authority, and obedience becomes a duty, the discharge of which never can or ought to make him liable as a trespasser who commits a wrongful act of his own free will and upon his own responsibility. Indeed, if this be not a just inference, these two consequences would ensue, both of which would be repudiated by the common understanding, justice, and laws of all civilized nations. One is, that whenever one government employs force in support of its pretensions against another, the latter may judge for itself as to the right to use that force, in respect to the citizens of the former, and treat them as personally or individually responsible for the acts of their government—a doctrine which finds its support in no authority, and is repugnant to the law of nations. The second is, that the citizens of one nation, required by its authority to engage in hostile acts against another, would be liable to be punished, perhaps put to death, for refusing to obey the order of their own government, if they declined obedience; or if they should obey and be taken in arms by the government against whom they were employed, the latter government would be at liberty to execute them as malefactors. So that, whether they obeyed the call of their country, and engaged in acts of force, or refused obedience to the requisition made upon them, they would be equally exposed to the punishment of death, from which they could not escape except through the clemency of the nation who should have them in their power. It surely cannot be the law of nations that such can be the position in which any citizen can lawfully be placed. So far from it, that law, while it holds the invading nation to a just responsibility for its unlawful acts, exempts from individual responsibility, as private wrong-doers, her armed citizens composing a military force from the consequences of the acts done under her authority and by her direction.

The point now under consideration may be viewed in another aspect, which, it is believed, will evince that the opinions expressed by the government of the United States, are founded on the highest reason. The act of the Queen's government which authorized the transaction in which McLeod was engaged, made that transaction a national one, and therefore the attack on the Caroline is considered as an act of that government, which is regarded by us as an unjustifiable invasion in time of peace of our territory, and a direct infringement of our national sovereignty, and, as such, one which may justify reprisals, or even general war, if the government of the United States, in the judgment which it shall form of the transaction and of its own duty, should see fit, or think proper so to decide. And if it be sound doctrine, by what right can we treat the subjects of Great Britain engaged in this interference, who may have fallen into our hands, as trespassers, or liable to indictment? If the transaction be one which may justly be treated by us as an act of open hostility, those who were employed in it were open enemies; they were engaged in an act equivalent to an act of war; they were acting in hostile movements under competent authority; and whether it be an isolated act of war, or preceded by a demand for satisfaction, as a public declaration of war, the individual responsibility is merged. The rules of international law apply. The community which orders the act is alone the re-

responsible party, and every view of the subject which urges the personal responsibility of McLeod, in effect exonerates the Government of Great Britain from all blame, and although she voluntarily assumes the responsibility, very kindly absolves her from it, against her will.

In connection with the preceding view of the subject, it may be added, that the question of the right to enter upon our territory is a public question. It arises between independent nations. The individuals concerned in it are mere agents, and the principals are the two Governments. It is not, for the present purpose, material to inquire in whose favor this question ought to be decided. As to the citizens engaged in it, they are mere instruments; and if they can be made subjects to municipal law, the question ceases to be a public and political one. It then becomes a mere private matter between the Government invaded and the persons invading; and thus every invasion by an independent Government may be treated as authorized, or entirely lawful, at the option of the invaded state, and the actors in it treated as prisoners of war, or as pirates, robbers, or murderers, as may seem best to the Government who has taken them. It surely cannot be necessary to add that such a principle is as unjust as it is unsupported by authority.

Such are the grounds on which the doctrine set forth in the documents referred to rest. It is believed that they are solid, and cannot be shaken. It is believed, also, that the opposite doctrine would tend greatly to increase the evils of war, and introduce again practices which have been long exploded as unjust and barbarous by the whole family of civilized nations. If personal liability of officers and soldiers is enforced in the courts of law for acts done under national authority; if they are to be treated as criminals, and punished as such; and especially, if this be lawfully done by the authority of a State Government, which is irresponsible to the foreign Government, and without the power of declaring war or making peace, then shall we be driven back to the practices of the most barbarous nations, and the ameliorated code of international law cease to exist.

A reference to the analogies and authorities bearing upon the point now under consideration will finish what I have to say upon it. To constitute piracy, the depredation must be committed without the authorization of any lawful acknowledged Sovereign. Therefore, it is said, whether one be a pirate or not, depends upon the fact whether he has or has not a commission to cruise; by *Bynkershoek*, chap. 17. If he acts under lawful authority, he acts in pursuance of it, it is not piracy. So also in relation to reprisals, which are a means of redress, to be used only in case of a denial of justice. They are an authorization granted by a Sovereign, to take the persons and goods of another Prince for an injury committed upon his subjects, for which justice has been denied by the Sovereign of the offending party, and are general of course. The acts are done that relieve them from the charge and punishment of piracy. If such authority exists, will it be claimed that the individuals acting under it can be punished as malefactors? It has been urged that a supposed distinction between acts done in a state of war and in a state of peace has not been sufficiently attended to. But it is necessary, to exonerate individuals from personal responsibility, when acting as part of a military force under the orders of an acknowledged government, that war should have been declared, or hostilities have been commenced, previous to the acts complained of. Let me answer these questions by another inquiry. Suppose McLeod had been tried on the 23d of March, and found guilty, and sentence of death had been passed upon him, and he had been executed; and immediately upon this being known by the commanders of the British squadrons on the West India and Halifax stations, they had entered, with their squadrons, the port of New York, and attempted to burn and destroy that city, acting under the orders of the Queen's Government, and they had been captured, would the officers, sailors, and marines have been liable to be tried as murderers or robbers, and executed? And yet, in such case, there could have been no demand for redress, and no declaration of war. It would have been an isolated act of hostility. The direct authorities bearing upon the rule of public law, have been referred to by the Senators from Virginia and Massachusetts. There are some which I will merely cite, but not repeat. *Vattel*, 223, 259, 263, 444. *Ruthenford*, b. 2, c. 9, s. 18. *Bynkershoek*, 127, 124, 135. *Puffendorf*, 52. The authority read from *Vattel*, supposed to be opposed to the doctrine admitted by the Secretary of State, has been commended on by other gentlemen. I will not refer to it, except to say, that it seems to be quite evident that it sustains rather than opposes that doctrine. A single quotation from *Rutherford*, which I think very much in point, is all which I shall read.

"The members of a civil society are obliged in general, and those members that have engaged themselves in the military service of it are obliged in particular, to take up arms and to fight for it, at the command of the constitutional governors, in the defence and support of its rights against its enemies from without. The consent by which the subjects in general, or the soldiers in particular, lay themselves under these obligations, is the only act that can, by the law of nations, be looked upon as a personal act of the individuals who bear arms. In consequence of the general consent of mankind to consider nations as collective persons, whatever is done by the members of a nation, at

the command of the public, or of the constitutional governors, who speak the sense of the public, is the act of the nation; and if the act is unjust, the guilt, in the view of the law of nations, is chargeable upon the NATION, NOT UPON THE INDIVIDUAL MEMBERS." "And if he was to fight as an independent individual, at his own choice and upon his own motion, those against whom he fights might look upon the act of bearing arms against them as such a war as a personal crime. But when they, with all mankind, have agreed to consider the several members of a civil society only as parts of a collective person, that act under the direction of the common will of such collective person, however inexcusable a man, who fights against them, might be, in the view of his own conscience, or of the law of nature, which considers him as an individual, they cannot, consistently with the law of nations, charge him with having been guilty of a personal crime merely on account of his having fought against them." "The law of nature, applied to individual persons, would make it a crime, not only in the view of conscience, but likewise in the view of mankind, to fight in an unjust war. But when mankind have agreed to keep individuals out of sight, as it were, and to apply this law only to collective persons, they cannot, consistently with this agreement, charge the parts of these collective persons with any separate guilt for what is done under the direction of the common or collective will." "In the less solemn kinds of war, what the members do, who act under the particular direction and authority of their nation, is, by the law of nations, no personal crime in them; they cannot therefore be punished, consistently with this law, for any act in which it considers them only as the instruments and the nation as the agent."

In what I have said on the general subject of the rule of international law, it has been very far from my intention to intimate that the British government is not to be held responsible for the unlawful act committed by its authority; on the contrary I have said, and I repeat, that I do not believe any necessity existed for the destruction of the *Caroline* which can be justified upon the rules of national law. If such necessity did exist, it is for the British government to show it. So far as is now known, I think the opinions heretofore expressed by this government in regard to the real nature of the transaction, viewing it as a most unjustifiable invasion in time of peace of the territory of the U. States, are correct. These matters, however, are now before the two governments. The views of this in relation to them are known to that of England, and an answer from the latter is expected. With these matters the question as to the exemption of McLeod from personal responsibility is not necessarily connected. The latter is a point depending upon the rules of public law, as applied to independent nations; and while the general rule of international law may shield the individual from personal liability, the nation authorizing it will be held to a just responsibility.

Having said all which I deem it necessary to say on the question of public law, I proceed to consider the other topic which the senator from Pennsylvania introduced, and on which he bestowed much attention. I refer to the charge or complaint against the Secretary of State for acting, in reference to this correspondence, in a manner not creditable to the American character, and for not manifesting sufficient energy and American spirit. This, if it be well founded, is no venial charge. It is one which affects men who have done the country some service, and whose reputation and character are the property of the nation. I propose to examine the nature and justice of this complaint, and I think it will appear to be wholly without foundation. The senator could excuse the Secretary of State for the minor offence of admitting, in favor of Great Britain, a principle which had no foundation in the law of nations. This, compared with the complaint to be considered, was, he said, a "small affair," and that he felt constrained as a senator of the United States, from a proper regard to the American character, to comment upon the correspondence of the Secretary, particularly the instructions to the Attorney General. The Executive Administration is condemned by him, both in respect to the tone and spirit of the reply to Mr. Fox, and for its interference with the local authorities of the State of New York, through the agency of Mr. Crittenden. Several particulars are mentioned under these general heads of complaint. Before referring to them, I would take leave to ask the senator what would be and his friends have done in the circumstances in which the administration was placed when these documents were written? If they had been in power would they have folded their arms, and said and done nothing? Or, in reply to Mr. Fox, have said, McLeod is in the custody of the law; we cannot and will not interfere; he has been taken within our limits, and if guilty, ought to be hung as a murderer? Would they have stood justified to the nation if such had been the course of action, and war had ensued upon the condemnation and execution of McLeod? If the President had acted wisely and in a manner not creditable to the American character, by reason of the want of energy and spirit, what should he have done? It is easier to find fault with an act which has been done than to point out what should have been its substance. And I should be pleased to hear the Senator's views as to the duty which was imposed upon the American Government after receiving the despatch from Mr. Fox, and the reply which should

have been made to it, and the probable results of such reply.

But the senator says there was a great panic put up in England, which extended to this country; to great that a part of the American squadron in the Mediterranean returned home. And from this I suppose it is to be inferred that, under the influence of this panic, concessions were made as to principles of public law, and a spirit of fear manifested not creditable to the American character. If there were any such panic in England, it is quite clear that it could not have had its origin in any act or declaration of the present administration. It must have proceeded from causes existing before the 4th of March last; and for it this administration are not responsible. Perhaps too the agitation which grew out of this affair of McLeod at the time referred to may have arisen from an unfounded apprehension that what was considered a well-settled principle of international law might fail of being enforced; but for this none connected with the executive could be responsible. As to any panic here since the 4th of March, it is the first intimation I have heard even of its existence; and it will require very strong proof to convince the people of this country that the deceased President or his successor, or any of his cabinet, participated in it, if it did exist. Indeed, when their proceedings are examined with reference to the attending circumstance, (to which I shall refer hereafter,) it will be quite obvious that, so far from being under the slightest influence of an unreasonable apprehension of hostilities, the Executive administration took high and commanding ground in support of American rights and honor, and while they rendered justice to Great Britain, upheld in a manly and patriotic tone the rights of their own country. As to the return of the *Brandywine*, we are informed by the Secretary of the Navy that it requires some explanation. From despatches sent to the department by Capt. Bolton, of that ship, it appears that the great excitement prevailing in England induced our Minister at that court to address a communication to Commodore Hull, the officer commanding the U. States naval forces in the Mediterranean, the result of which was, that the squadron then lying at Mahon left the station with a view to get out of that sea, ascertain the state of things between the United States and Great Britain, and either resume their station or return home according to the result. Whatever of blame (if any) attaches to the sudden return of the frigate to our shores, it surely cannot be justly chargeable to the present administration. Whenever the proceedings connected with this subject are brought before the public, it will be found, I think, although I do not speak authoritatively, that her departure from her station, and her return home, were the result of communications made by our minister at the court of St. James, and which possibly may have been predicated upon a report made to one of its committees, and which I will not stop here to characterize. For neither of these productions does any responsibility rest upon those who are now at the head of the Executive department of the Government. They proceeded from the friends and supporters of the late administration, and if they had the effect to produce a great excitement among the people of England, and to cause our armed vessels to leave their stations, and the commerce of the country these unprotected, the consequences belong to the authors of the mischief, and not to those who had no agency in the transaction.

Another ground of complaint against the Secretary of State is, that he took no notice of what the Senator is pleased to call a threat by Mr. Fox in his note to Mr. Webster, and which, as soon as he read it, led him to resolve to bring it before the Senate. The objectionable language is, after repeating the demand for the release of McLeod upon the grounds and for the reasons previously stated, "and her majesty's government entreat the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand." If this be the language of menace, it is not more than is often used towards the most sensitive nations, and public functionaries, and which has not been thought to require animadversion or even notice. My friend from Virginia (Mr. River) stated to the Senate while holding the highly honorable and responsible trust of minister at a foreign court remarkable for its high sense of honor, which would be peculiarly sensitive should there be the most remote allusion to a threat or menace, he deemed it his duty to use language strong and decided, but courteous, and respectful, and as open to the objection of menace as that of Mr. Fox; but it was not considered offensive, and not treated as approximating to a threat. So, also, similar language was used by Mr. Fox, in his previous correspondence with Mr. Forsyth, which did not, so far as I know, excite any particular sensibility. It is to be remembered, also, that the words of the British minister are to be taken in connection with those which preceded, and it does not necessarily follow that any thing more was intended than to call the attention of the President to what might be the result (other than war) of denying a principle of international law, believed by his government to be well established and reasonable. Upon the application of this principle to the case of McLeod, that government insisted, appealing to the nature of the consequences which might follow its denial; and was it for our government to say that Great Britain was not serious in this demand, or that she was attempting to enforce it by menaces and threats? Did any necessi-

ty exist requiring the Secretary of State to regard it in such an aspect? Was he bound to say that the language implied a threat? I am sure the slightest examination of the correspondence will show that our government was not required by any principle of public duty necessarily to infer that Mr. Fox designed, by the language he used, to intimate that an appeal to arms would follow the rejection of the demand for the release of McLeod.

The senator says that common prudence required that the Secretary of State should not have admitted so strongly and decidedly the correctness of the rule of international law, as claimed by Great Britain. I am sorry the Senator made this suggestion. This nation is distinguished for its readiness to accord equal and entire justice to other nations. While it is equally its duty and determination to assert and maintain its own rights, it means scrupulously to refrain from infringing on the rights of others. It does not mean to deny to any nation the benefits of the well-established rules which govern the whole family of nations. Now what should the Secretary of State have done, acting under the settled conviction that the rule of international law was well established to be shaken or doubted; that individuals, forming part of a public military force and acting under the authority of a legitimate acknowledged government, are not to be held responsible individually for the consequences of their acts? Should he have pursued the course which would seem to be indicated by the nature of the complaint made against him—have spoken doubtfully as to the existence of this rule of public law? Should he have partly condemned and partly admitted it? Should he have shuffled and evaded, and neither acknowledged nor denied its existence? Would this have comported with the honor and dignity of the American character? I trust no such views as these entertained by the Senator on this subject will ever prevail in the councils of this nation. I do not believe they will. The policy recommended is of a character which will be productive of no good. If our government is satisfied that the principle of the law of nations, as claimed by a foreign government, is undoubted, it will say so frankly and unreservedly. It will not desire to evade the point presented by doubting or denying the principle. No motives of prudence will ever influence it to adopt such a course. It will never seek to maintain its interests at the expense of its character for manly frankness. It will be just to all, regardless of consequences.

But, it is said, there is much to condemn in the instructions to the Attorney General. It is insisted that he should not have been sent on the business connected with the trial of McLeod; that the latter was before the regular legal tribunals of the state of New York for trial, and no necessity existed for any interference on the part of the national government. It should not have been suggested that while the former administration in the courts of the United States a *nolle prosequi* would be entered; that counsel for the accused should not have been ordered to be procured; and the senator intimates that possibly a bill for counsel fees in this case may hereafter be presented against the United States; and that, from his knowledge of the character of the Attorney General, he inclined to think that the mission was not a very agreeable one to him. Now, I can hardly believe that the senator supposes that such a bill for fees will be presented for payment to the Congress of the United States; and I dismiss that point without further comment. As to the mission of Mr. Crittenden being unpleasant to him, I venture to say he speaks without authority; and I will add, that I believe, so far from its being one which he disliked, that he entirely concurred in its propriety, and, from my knowledge of him and his high character, that the views expressed in the letter of instructions to him met his entire approbation. The Secretary of State does say that if the indictment were pending in one of the courts of the United States, the President would have directed the entry of a *nolle prosequi*; and this is deemed worthy of animadversion. But what reasonable ground of complaint does this declaration of Mr. Webster furnish? If the law of nations protected McLeod from punishment, why should he be tried? If the avowal of his act, as an act of the government, discharged him from personal responsibility, in what more proper, speedy, and effectual way could he have the benefit of it than the one mentioned? Would it have comported with this government deemed to be its duty to a foreign nation to have permitted a trial to be had when punishment could not follow? Was the force of a legal investigation to be got up and pursued, when no practical result connected with such investigation could be attained? If, then, the indictment had been pending in a court of the United States, the entry of a *nolle prosequi* would have been not only proper, but most speedy and effectual mode of giving effect to a clear principle of public law. But the Secretary well knew that the President had no power to arrest the proceedings in the civil and criminal courts of the state of New York. So far, therefore, from intimating a course to be pursued by the Executive of that state, he says the government is not informed whether the Governor of New York has the power of ordering a *nolle prosequi*, or, if he has, whether he would feel it his duty to exercise it. And no instruction is given to the Attorney General to interfere with the proceedings pending in the courts of that state. Nor is any thing in the nature of a menace, nor even in the way of advice to the authorities of the state in relation to the indictment, suggested. The Secretary leaves the whol-

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And now, what was the action of the President, under the peculiar circumstances in which he was placed? Did he attempt to interfere with the regular administration of the laws in the state of New York? Did he even advise or suggest what course her government should pursue? Did he recommend a *nolle prosequi* to be entered? Did he intimate that persons confined under judicial process could be liberated from confinement otherwise than by judicial process? Very far from all this was his conduct. He did that only which was made necessary and proper by existing circumstances, and which was in entire subordination to the rule that the discharge of McLeod was to be sought in a manner conformable to the principles of law and the proceedings of courts of judicature. He therefore directs the Attorney General, the confidential law officer of the government, to proceed to the state of New York; to carry with him the authentic evidence of the recognition, by the British government, of the destruction of the *Caroline* as an act of public force, done by national authority; to suggest to the counsel of the prisoner that the President felt the importance of transferring the trial from the scene of the excitement to a more remote county; to furnish the counsel with the evidence of the recognition just mentioned; to see that the prisoner had the assistance of skillful

counsel, if such had not been retained; and to signify to him and his counsel, if his defense was overruled, that it was the wish of the Government that the proper steps should be taken for the immediate removal of the case, by writ of error, to the Supreme Court of the United States. This was all which the President directed to be done. Is there any part of it which was out of the line of his duty? Is the President in fault for furnishing McLeod with the legal evidence of the avowal of his government of his act as a national act? Or for seeing that he was assisted by able counsel? Or for suggesting to them that the place of the excitement was not the most suitable place for a fair and impartial trial? Or that this government being the only responsible party known to foreign governments, wished that the opinion of the Supreme Court of the United States might be taken, in a proper and legal form, upon the question of public law, if it should be ruled against the prisoner? Was this succumbing to a foreign power? Was this yielding to threat or menace? Was this acting under the influence of fear or an unnecessary panic? Was this course calculated to impair the honor or dignity of the country, or to put at hazard any of its interests? Or unnecessarily to involve us in hostilities? Let the sober and enlightened judgment of the people answer.

It is suggested that the instructions to Mr. Crittenden were communicated to the British Minister immediately or before the despatch was written to him. I feel sure that this cannot be supposed to evince a desire hastily to conciliate Great Britain for although it does not appear, from anything in the documents before us, that they were so communicated, yet, if they were, there was nothing in them, which it was either necessary or proper, should be withheld from the British government. Concealment would do no good. The instructions showed the views of our government on the question of public law; and, also, what steps it could take, consistently with our institutions, to give McLeod the benefit of them. Surely there was nothing in the instructions which the honor or interests of the United States demanded should be concealed from the government of Great Britain. They were clear and explicit; and a copy of them was subsequently communicated to Mr. Fox, by the Secretary of State, in connection with his note of April 24th. There could be no sacrifice of honor in a frank and speedy avowal of what the government had done in the discharge of its duties to a foreign government, so far as the constitution and the laws of the country authorized them to go.

I believe I have now referred to all the particulars—the specifications of complaint which have been suggested by the Senator. Having commented upon each of them, he drew from them all this inference: that they manifested a spirit not creditable to the American character, evincing a want of sufficient energy, and the absence of American spirit. Let me, then, briefly refer to them, and inquire whether these complaints have any just foundation?

The Secretary did not refer, in suitable language, to all implied threat. There was no obligation to consider the language as conveying any such threat or menace.

He should not have admitted the rule of public law in such a decided and explicit manner. Neither honor nor manly frankness required him to express any doubt upon a point of international law which was sustained by every principle of sound reason, and by every modern writer on the law of nations.

He should have abstained from sending the Attorney General to the state of New York to perform the acts specified in his instructions.

And what were these acts? To furnish McLeod with the evidence of the recognition of his act by his own government. This was just. The British government had no communication with the authorities of the state of New York. Their avowal was to the government of the United States. No principle of public policy can overrule the great principle of justice, which demanded of this government that they should not withhold from an individual arraigned for murder evidence in its possession which he deemed essential for his defense. The Attorney General was to see that McLeod had able counsel. Was it derogatory to the character of the government, or evidence of fear, that it was desirous that an individual whose discharge had been demanded of it, under the law of nations, should have the benefit of skillful legal advisers? Was it the opposite of American spirit and energy, that the government of the United States should wish, under such circumstances, that the individual who could not be released from confinement under judicial process otherwise than by judicial process, and in a manner conformable to legal principles and the course of practice in courts of justice, should enjoy the advantage of professional men to aid him in his judicial proceedings? The Attorney General was to suggest to the counsel for the prisoner that the President was impressed with the propriety of transferring the trial from the scene of the principal excitement to some other and distant county. Appealed to as the President had been for the release of McLeod, was it strange that he should be anxious that he should have a fair and impartial trial? Is this anxiety the result of fear of the power of Great Britain? Does it manifest a disposition to yield to threats and menaces? Is it discreditable to the American character that its Chief Magistrate should wish that justice should be fairly and impartially administered? The Attorney General was to signify the wish of this government that a writ of error should be brought from the decision of the court of the state of

